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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
EUGENE DIVISION**

**JENNIFER JOY FREYD,**

Plaintiff,

vs.

**UNIVERSITY OF OREGON,**

Defendant.

**Case No. 6:17-CV-00448-MC**

**PLAINTIFF'S MOTION FOR LEAVE TO  
FILE FIRST AMENDED COMPLAINT**

**MOTION**

Plaintiff moves pursuant to Fed R. Civ P. 15(a)(2) to amend her Complaint. The proposed Amended Complaint is attached as exhibit 1. Plaintiff's counsel has conferred with defendant's counsel and defendant opposes this motion.

**POINTS AND AUTHORITIES**

Professor Jennifer Freyd has brought this case against her employer, the University of Oregon, alleging pay discrimination. Her Complaint includes ten claims, both state and federal, all challenging essentially the same wrong, which is the pay disparity. The number of claims reflects the large number of laws and doctrines that all prohibit sex-based wage discrimination.

The proposed Amended Complaint adds two parties, University of Oregon President Michael Schill and Dean Hal Sadofsky, to one claim: a federal constitutional equal protection claim (claim 5), asserted pursuant to 42 U.S.C. § 1983. It drops that claim against the University of Oregon as an entity. This claim has a two-year statute of limitations. *See, e.g., Addison v. City of Baker City*, 258 F. Supp. 3d 1207, 1236 (D. Or. 2017). Because Prof. Freyd is still receiving an unequal salary, the alleged violation is ongoing. Therefore the addition of new parties is timely. The new parties are only named with respect to the sole claim, and their addition is necessary under the doctrine of *Will v. Michigan Dept. of State Police*, 491 U.S. 58 (1989). In *Will*, the U.S. Supreme Court held that a state entity is not a “person” within the meaning of § 1983, requiring instead the naming of individual state officials in such claims. President Schill is named in his individual capacity for retrospective relief and official capacity for prospective relief, and Sadofsky is named only in his individual capacity.

The proposed Amended Complaint also adds a factual allegation regarding exhaustion of plaintiff’s Title VII claims, and adds a claim for punitive damages to the seventh claim for relief, which is a state law disparate treatment claim.

Defendant’s counsel opposes the filing of this new Complaint because defendant contends that President Schill and Dean Sadofsky are not proper defendants, and because defendant believes that plaintiff should drop her Equal Pay Act claim. Both of these are issues that should be decided via either a motion to dismiss or a summary judgment motion, upon full briefing, but not by barring the filing of the proposed Amended Complaint.

Because “[t]he court should freely give leave [to amend] when justice so requires,” leave to amend should be granted here. Fed. R. Civ. P. 15(a)(2). Amendment to add the new parties is necessary to properly plead the § 1983 claim. The new allegations regarding exhaustion are

necessary to properly plead plaintiff's Title VII claims. There is no prejudice in allowing these amendments. Defendant's objections to the merits of the allegations are properly heard through other procedural mechanisms, not by barring the proposed filing.

Respectfully submitted this 30<sup>th</sup> day of March, 2018.

**JOHNSON, JOHNSON, LUCAS & MIDDLETON, PC**

By: /s/ Jennifer J. Middleton  
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## CERTIFICATE OF SERVICE

I certify that on March 30, 2018, I caused to be served a true and correct copy of **PLAINTIFF'S MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT** on the following persons in the manner indicated below at the following address:

Shayda Zaepoor Le  
Attorney at Law  
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*Of Attorneys for Defendant University of Oregon*

\_\_\_\_\_ by CM/ECF system transmission.

  X   by U.S. Postal Service to the address indicated above on March 30, 2018.

  X   by email to the address indicated above on March 30, 2018.

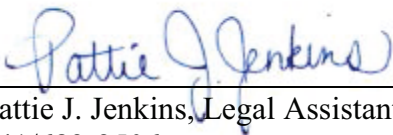
\_\_\_\_\_ by email via Drop Box on \_\_\_\_\_, 2018.

\_\_\_\_\_ by email via the Court's electronic filing system on \_\_\_\_\_, 2018.

\_\_\_\_\_ by facsimile to the facsimile number indicated above on \_\_\_\_\_, 2018.

\_\_\_\_\_ by hand delivery on \_\_\_\_\_, 2018.

**JOHNSON, JOHNSON, LUCAS & MIDDLETON, PC**

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